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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,282	07/22/2003	Frederick G. Payne	54593-2	7900

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JOSEPH W MOTT  
JENNINGS STROUSS & SALMON PLC  
201 EAST WASHINGTON STREET  
11TH FLOOR  
PHOENIX, AZ 85004-2385

EXAMINER

KATCHEVES, BASIL S

ART UNIT

PAPER NUMBER

3635

DATE MAILED: 08/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/625,282	PAYNE, FREDERICK G.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Basil Katcheves	3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This non final action is necessitated by the reconsideration of art previously cited in the action.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,269,008 to Assouline.**

Regarding claim 1, Assouline discloses a method of discouraging roosting comprising identifying a roosting zone (abstract) and applying a slide (Flat surfaces at fig. 1: 7 and fig. 4: 2) sheet which comprises angled slick outer faces (4). Regarding the “formed” limitation, applicant should note that determination of patentability is based on the method itself. The patentability of a method does not depend on an article's method of production (in this case “formed”). If the article in the method claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 2, Assouline discloses the slide as being a peaked polyhedron (claim 1).

Regarding claim 3, Assouline discloses the slide as a triangular prism.

Regarding claim 4, Assouline discloses the slide as being a pyramid.

Regarding claim 5, Assouline discloses a triangular prism, the side affixed to the roosting zone is partially open (fig. 4: area between slides), and the slide across section is an inverted "V" (fig. 2: 4, inverted V profile).

Regarding claim 10, Assouline discloses a partial pyramid (fig. 1: see top portion 5 and angled surfaces of pyramid which if extended to base 7 would be angled, not straight as 3 is, therefore disclosing the top portion of a pyramid and not the entire pyramid).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,269,008 to Assouline.**

Regarding claim 11, Assouline discloses a method of discouraging roosting comprising identifying a roosting zone (abstract) and applying a slide (Flat surfaces at fig. 1: 7 and fig. 4: 2) sheet which comprises angled slick outer faces (4). Assouline discloses the basic claim structure of the instant application but does not disclose angled dimensions as following roof slopes. Applicant fails to show criticality for specifically claimed slopes, therefore it would have been an obvious design choice to

Art Unit: 3635

use the dimensions such as specified in these claims since Assouline discloses the use of differing slopes (fig. 2: 4' and 4").

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,269,008 to Assouline in view of U.S. Patent No. 6,546,676 to Wiesener et al.**

Assouline does not disclose silicone applied along a periphery to fasten the object. Wiesener discloses a bird repelling device secured to a structure through the use of a silicone adhesive (column 3, lines 14-16). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Assouline by adding silicone adhesive, as disclosed by Wiesener, along the periphery of the device in order to create a weather resistant seal in order to prevent water from entering the underside of the device and rotting the material beneath.

### ***Response to Arguments***

Applicant's arguments filed 6/6/06 have been fully considered but are moot under new grounds of rejections.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

Art Unit: 3635

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

  
Basil Katcheves

7/27/06

Examiner AU 3635